



DEFENSE LOGISTICS AGENCY
DEFENSE ENERGY SUPPORT CENTER
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FORT BELVOIR, VIRGINIA 22060-6222

IN REPLY
REFER TO

DESC-CPA

DEC 05 2002

CONTRACTING INSTRUCTION (CI): 02- 13A

MEMORANDUM FOR CI Distribution

SUBJECT: Release of Unit Prices under the Freedom of Information Act (FOIA)

This CI is being issued to inform contracting personnel of revised DESC policy. Also, it includes a revised required clause, Release of Unit Prices, to be used by all CBUs except Electricity and Bulk (DESC-B) and a new clause, Release of Unit Prices, to be used in all Bulk solicitations. The clauses address the release of unit prices under FOIA. Both FAR 15.503, Notifications to Unsuccessful Offerors and FAR 15.506, Postaward Debriefing of Offerors, support dissemination of *awarded* unit prices. DESC is therefore taking the position that awarded unit prices may always be disseminated.

For the majority of the CBUs (with the exceptions of Electricity and Bulk) revised clause K15 simply states that we will be releasing *awarded* unit prices. Additional procedures to use with the revised clause are included in the attached DEPI coverage. When a request is received for unit prices that were submitted but did not receive an award, the Contracting Officer (CO) shall send a letter, similar to the template attached to this coverage, to the offeror whose prices are being requested.

The new clause, K15.01, specifically for use by Bulk Fuels, also says that awarded unit prices may be disseminated to requestors. This clause also states that DESC-B will continue to release unit prices of unsuccessful offers after contract award that are included in a Government document such as the Bid Evaluation Model or other similar evaluation document in accordance with DOD 5400.7-R (C5.2.8.2).

Effective immediately, revised clause K15, Release of Unit Prices, dated Oct 02 or clause K15.01 shall be inserted in all solicitations except electricity. Solicitations that have not yet been awarded should be amended to include the revised or new clause. This CI is effective immediately and expires upon inclusion in the DEPI. Point of contact is Cheryl Creason, extension 8471.

Gabriella M. Earhardt
GABRIELLA M. EARHARDT
DESC Center Senior
Procurement Official

Attachments:
DEPI coverage
Contract clauses
Letter template



PART 24

PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

SUBPART 24.2 - FREEDOM OF INFORMATION ACT

24.203 Policy.

(a) Freedom of Information Act (FOIA) procedures are governed by the DoD regulations listed in DOD 5400.7-R and by DLA Regulation 5400.14, DLA Freedom of Information Act Program.

(b) All FOIA requests and questions about the FOIA program shall be referred to the DESC FOIA Manager, Procurement Oversight Branch, Procurement Planning and Support Division (DESC-CPB). The FOIA Manager will process all FOIA requests for DESC, including coordinating with DESC-G and other interested offices.

(c) FOIA requests must by law be answered within 20 working days. The FOIA Manager will assign a suspense date on FOIA requests referred to other DESC offices for response based on the complexity of the request, related research and the response date required by law.

(d) Letters of denial and letters stating that no records have been found must be signed by the Director. The FOIA Manager will prepare a letter for signature by the Director, DESC-D, requesting that the Director sign such correspondence. The request will be coordinated through the DESC-CPB Chief, DESC-CP, DESC-G and DESC-CSPO. The letter with the requester's correspondence enclosed will be forwarded to the Director.

(e) (1) Acquisition information may be provided as a part of the acquisition process without regard to formal FOIA procedures when release of such information is authorized by law or regulation and would clearly benefit the Government due to a potential increase in competition. In general, information that the submitter (offeror) has already approved for release and can be briefly conveyed verbally over the telephone or is available on the Internet can be given out by the buying office. Any document that can be mailed or faxed must normally be released through the FOIA office only. Usually, contracts, modifications, price modifications and documents incorporating a submitter's confidential business practices can be released by the FOIA manager only. If the submitter has not approved release, then the request must be denied. Always contact our FOIA office first if you have the least doubt.

(2) Requests for the complete contract or information not routinely supplied during the acquisition process (e.g., unusual requests for acquisition information, requests for acquisition information not readily available, and requests for excessive amounts of acquisition information) and not approved for release by the submitter (offeror) will be referred to the FOIA Manager.

(f) FOIA Unit Price Policy

(1) Presolicitation – insert the Release of Unit Prices clause into each new solicitation.

(2) Post –solicitation –

(i) If there is a FOIA request for unit prices that were incorporated into a contract, release the information. No submitter notice is required

(ii) If there is a FOIA request for information from any CBU except Electricity or Bulk regarding unit prices that have not been incorporated into the contract, the Contracting Officer (CO) shall follow the "Submitter Notice Procedure". Under this procedure, the CO shall send a letter to the submitter of the information, notifying it of the request for the information and be given a reasonable opportunity (30 days) to respond. The CO shall also notify the FOIA Manager of the pending action so that the FOIA Officer may send the requester an interim letter, notifying him that we are working on his request. The submitter should be advised that any response objecting to disclosure should include a detailed rationale explaining the competitive harm that would be caused to the submitter. Once a response is received and the submitter does not agree to the release of unit prices, the CO shall conduct a thorough competitive harm analysis prior to recommending the release or withholding of the information. The analysis will be coordinated through the FOIA Officer as well as the Office of Legal Counsel. If it is determined that release of the unsuccessful prices will cause competitive harm, the prices shall not be released. The Contracting Officer may, however release the companies' names and relative rankings. If it is determined that the prices will not cause competitive harm, then the prices may be released. The Department of Justice (DOJ) recommends notifying the submitter in all cases of the competitive harm determination prior to release. In all cases, the decision to release over the submitter's objection or the decision to deny the FOIA request must be made by the Initial Denial Authority (DESC-D).

(iii) If there is a FOIA request for proposed prices that did not receive contract award against a Bulk solicitation, the Offeror's name and total price and unit prices may be released when set forth in the Bid Evaluation Model or other Government record.

K15/52.224-9F25 RELEASE OF UNIT PRICES. Required in all solicitations, except electricity and bulk. MFRs dated 30 Jul 02, 3 Oct 02.

K15 RELEASE OF UNIT PRICES (DESC OCT 2002)

The Defense Energy Support Center (DESC) will continue to release unit prices of successful offerors after the contract award pursuant to 10 U.S.C. 2305(g)(2), FAR 15.606(d)(2) and 32 CFR 286h-3. Unit prices are the bottom-line price per unit of product and may include the total contract price. They do not include any breakout of costs, such as transportation or overhead, and do not disclose the offeror's anticipated profit or any pricing factors.

(DESC 52.224-9F25)

K15.01/52.224-9F26 RELEASE OF UNIT PRICES (BULK). Required in all bulk fuel solicitations. MFR dated 5 Nov 02.

K15.01 RELEASE OF UNIT PRICES (BULK) (DESC NOV 2002)

(a) The Defense Energy Support Center (DESC) has routinely released the unit prices of successful and unsuccessful offerors to interested parties at the conclusion of the procurement. This information has been released in various formats, including abstracts of offers received, bid evaluation model reports, notices to unsuccessful offers, and other summary formats. Updated contract prices are also publicly posted on the DESC website throughout the delivery period of some contracts. Offerors have not objected to DESC's routine release or disclosure of these unit prices.

(b) DESC will continue to release unit prices of successful offers after contract award pursuant to 10 U.S.C. 2305(g)(2), FAR 15.506(d)(2) and 32 CFR 286h-3.

(c) DESC will continue to release unit prices of unsuccessful offers after contract award that are included in a Government document, such as the Bid Evaluation Model or other similar evaluation document, in accordance with DoD 5400.7-R (C5.2.8.2.).

(DESC 52.224-9F26)

D R A F T

DESC-

Date:

Ms.
President
Energy Company
2102 Main Street
Anytown, USA

Dear Ms. :

On [date of request], [name of entity submitting FOIA request] submitted a request under the Freedom of Information Act to the Defense Energy Support Center (DESC) seeking the release of your offered unit prices that were unsuccessful on our recently concluded procurement. The requested "unit prices" were your bottom-line prices per unit of your product. They did not include any breakout of your costs, such as transportation or overhead, and did not disclose your anticipated profit or any pricing factors.

If you believe that release of your unsuccessful unit prices after award causes you any competitive harm, you must so advise us and provide a detailed explanation of how you would suffer competitive harm from this disclosure. This detailed explanation must be provided within 30 days from the date of this letter. DESC will use this information to determine if there is a sufficient basis to withhold your unsuccessful unit prices after award. Your objection to the release of your unsuccessful unit prices without providing a detailed explanation of competitive harm within 30 days may result in their disclosure. Please advise us at the address above.

Sincerely,

John Doe
Contracting Officer